Supreme Court, U. S.
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NO. 80-351

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

FRANK R. MAGNELLI,
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA
STATE CIVIL SERVICE COMMISSION

and

PENNSYLVANIA LIQUOR CONTROL BOARD

ON WRIT OF CERTIORARI
TO THE COMMONWEALTH COURT
OF THE COMMONWEALTH OF PENNSYLVANIA

REPLY BRIEF FOR PETITIONER

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I

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

A. THE RECORD DOES NOT SUSTAIN THE FINDINGS OF THE CIVIL SERVICE COMMISSION.

Respondents emphasize the importance of a handbook having no legal significance and overlook the facts to justify the dismissal of Petitioner. Petitioner was not dismissed for violating any handbook provisions. He was dismissed because he exercised his First Amendment right of free speech in reporting wrong doing on the part of the Chairman of the Pennsylvania Liquor Control Board.

There was no intolerable conflict between his enforcement officer duties and his part time law practice. Petitioner maintained excellent performance evaluations. His last performance

evaluation (Pet.Ex.A26,R.139,140) states:

> "You continue to do an excellent job. You performed your duties as Acting Supervisor in an excellent manner. You are an asset to the Board."

Petitioner's part time law practice was well known throughout the Liquor Board. The Chairman, himself was aware of it (R.166). The part time law practice only became objectionable when the Liquor Board sought a basis to dismiss Petitioner. At the Civil Service hearing, the Civil Service Commissioner was even compelled to say (R.32):

> "Why didn't you take action in 1973 if it was such a bad practice?"

Many findings of fact made by the Civil Service Commission were clearly unfounded. The following portion of the Court's opinion in St. Joseph Stock Yards Co. v. United States 298 U.S. 38, 52 merits consideration:

> "Legislative agencies, with varying qualifications, work in a field particularly exposed to political demands. Some may be expert and

> impartial, others subservient. It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence. But to say that their findings of fact may be made conclusive where constitutional rights of liberty and property are involved, although the evidence clearly establishes that the findings are wrong and constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards. That prospect, with our multiplication of administrative agencies is not one to be lightly regarded."

B. THE DECISION WHICH PETITIONER SEEKS TO HAVE REVIEWED WAS NOT BASED ON ADEQUATE AND INDEPENDENT STATE GROUNDS.

Reasons formulated as a result of a retaliatory investigation initiated against one because he exercised a constitutionally protected right cannot constitute adequate and independent state grounds nor may a state court avoid deciding federal questions and thus defeat the jurisdiction of the

United States Supreme Court by putting forward non-federal grounds of decision which are without any fair or substantial support. Ward v. Love County, 253 U.S. 17.

The important question requiring the Court's consideration is not whether there existed an adequate ground for dismissing Petitioner, but whether the stated ground was the real one. This important question was recognized in Board of Regents v. Roth, 408 U.S. 564, 582 (Douglas, J., dissenting):

> "When a violation of First Amendment rights is alleged, the reasons for dismissal or for nonrenewal of an employment contract must be examined to see if the reasons given are only a cloak for activity or attitudes protected by the Constitution. A statutory analogy is present under the National Labor Relations Act, 29 U.S.C. §151 et seq. While discharges of employees for "cause" are permissible (Fibreboard Corp. v. NLRB, 379 U.S. 203, 217), discharges because of an employee's union activities are banned by §8 (a) (3), 29 U.S.C. §158 (a) (3), So the search is to ascertain whether the stated ground was the

real one or only a pretext. See J. P. Stevens & Co. v. NLRB, 380 F. 2d 292, 300." (Emphasis Added)

The constitutional questions involved were placed before Commonwealth Court as revealed by the record. No particular form of words or phrases has ever been declared necessary in which the claim of federal rights must be asserted and it is sufficient if it appears from the record that such right was specifically set up or claimed in the state court in such a manner as to bring it to the attention of that court. Green Bay & Mississippi Canal Co. v. Patten Paper Co., 172 U.S. 58.

C. PETITIONER'S ACTIONS INVOLVE AN EXERCISE OF FREE SPEECH WITHIN THE PRINCIPLES ENUNCIATED IN PICKERING V. BOARD OF EDUCATION.

The principle enunciated in Pickering is that a statement by a public employee

as to matters of public concern, even though critical or directed against his superiors is entitled to First Amendment protection. The factual differences between Pickering and Petitioner's case favor Petitioner.

A review of the record would conclusively show that Petitioner made no false or reckless statements. Petitioner made a confidential disclosure to the chief enforcement officer of his state detailing improper conduct on the part of a state official and requested an investigation to verify his conclusions. Such a disclosure is a protected right within the meaning of Pickering. It could not have been made through channels as Respondents claim was Petitioner's duty.

D. PETITIONER'S WRIT PRESENTS FEDERAL QUESTIONS OF SIGNIFICANCE

Petitioner was denied due process and

a right to speak freely on matters of public importance - both are significant questions which are worthy of the Court's consideration. Embodied in the Petition is the denial of another right, the right to the security and assurance that one's confidential communications remain confidential and privileged.

The sanctity of a confidential communication should not be permitted to be violated in order to stifle an enforcement officer's duty to report wrong doing to a proper authority.

II

CONCLUSION

For the reasons stated above, as well as those stated in the Petition for Certiorari, Petitioner prays that the Petition for Certiorari be granted.

Respectfully submitted,

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